1st Technology LLC VS Sportingbet PLC., etal Doc. 17

GORDON & SILVER, LTD.
JOSEPH S. KISTLER
Nevada Bar No. 3458
JOEL Z. SCHWARZ
Nevada Bar No. 9181
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89109
(702) 796-5555
Attorneys for Defendant,
Sportingbet Plc

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, vs. SPORTINGBET PLC, NDS GROUP PLC, ONGAME E-SOLUTIONS AB, and ORBIS TECHNOLOGY, Defendants.	CASE NO. CV-S-05-0788-RLH-PAL **REPLY IN SUPPORT OF: MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(2); MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**

Defendant, Sportingbet Plc, by and through counsel, hereby submits its Reply In Support of Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) and Reply in Support of Motion for More Definite Statement pursuant to Fed. R. Civ. P. 12(e). This Reply is made and based upon the papers and pleadings already on file herein, including the Motion to Dismiss and Motion for More Definite Statement, the following Memorandum of Points & Authorities, and any oral argument the Court may permit at the hearing of this matter.

Dated this 8th day of November 2005.

GORDON & SILVER, LTD.

Joseph S. Kistler

JOSEPH S. KISTLER
Nevada Bar No. 3458
JOEL Z. SCHWARZ
Nevada Bar No. 9181
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89109
(702) 796-5555
Attorneys for Defendant,
Sportingbet Plc

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Although Plaintiff attempts, unsuccessfully, to establish that this Court has jurisdiction over *some unnamed* Sportingbet entity, Plaintiff has submitted *nothing* to establish that jurisdiction over Sportingbet Plc, the Defendant named in this action, is appropriate. Sportingbet Plc has provided the Court with ample and undisputed evidence that there is no jurisdiction over Sportingbet Plc and that, therefore, the claims for relief in Plaintiff's Complaint against Sportingbet Plc should be dismissed under Fed. R. Civ. P. 12(b)(2). In addition, in opposing Sportingbet Plc's Motion to Dismiss for Lack of Jurisdiction, Plaintiff makes repeated reference to a specific, allegedly infringing product, but then argues that it need not amend its Complaint to indicate what that product is and how that product infringes Plaintiff's patent. Plaintiff has not demonstrated that it will be prejudiced in any way by being required to amend its Complaint to contain more specific allegations of infringement. Therefore, in the event that this Court determines that there is personal jurisdiction, Plaintiff should be required to place Sportingbet Plc on reasonable notice of its claims by articulating those facts that Plaintiff necessarily must have known prior to the commencement of this action.

II.

LEGAL ARGUMENT

A. THE COURT LACKS JURISDICTION OVER NAMED DEFENDANT SPORTINGBET PLC.

The party seeking to invoke the jurisdiction of a federal court has the burden of establishing that jurisdiction exists. Data Disc, Inc. v. Systems Technology Assoc., 557 F.2d 1280, 1285 (9th Cir. 1977). In analyzing jurisdiction, the trial court is not bound by the pleadings, and the party asserting jurisdiction has the burden of establishing jurisdiction if its allegations are challenged in any appropriate manner. Taylor v. Portland Paramount Corp., 383 F.2d 634, 639 (9th Cir. 1967). The mere allegations of a complaint, when contradicted by

GORDON & SILVER, LTD.
ATTORNEYS AT LAW
NINTH FLOOR
3960 HOWARD HUGHES PKWY
LAS VEGAS, NEVADA 89109
(702) 796-5555

affidavits[1], are not sufficient to confer jurisdiction. See id. In such a case, *facts, not mere allegations* must be the touchtone. Id. (emphasis added); see also, AMBA Marketing Systems, Inc v. Jobar Int'l, Inc., 551 F.2d 784, 787 (9th Cir. 1977) (Plaintiff could not simply rest upon the bare allegations of its complaint, but rather was obligated to come forward with facts supporting personal jurisdiction). A court may not assume the truth of allegations which are contradicted by affidavit. See Data Disc, 557 F.2d at 1284.

In the present matter, Plaintiff has only alleged jurisdiction generally over Sportingbet Plc in its Complaint. By contrast, Sportingbet Plc has submitted the declaration of Daniel Talisman that states, *inter alia*, that Sportingbet Plc, the entity named as Defendant in the present action, is not incorporated in Nevada, does not hold any licenses to conduct business in Nevada, has not designated any agent for service of process in Nevada, and conducts no business in Nevada. (See Talisman Declaration, ¶¶ 8,9). Defendant Sportingbet Plc is a holding company and does not conduct gaming business anywhere in the world. (Id. at ¶¶ 4, 6).

To attempt to support its allegation of jurisdiction over Sportingbet Plc, Plaintiff cites to the activities of the online poker room ParadisePoker.com. ParadisePoker.com, however, is not owned or operated by Sportingbet Plc. Rather, it is owned and operated by a subsidiary of the Sportingbet Plc group, and such subsidiary is not named as a defendant in the present action. Furthermore, the activities of ParadisePoker.com are not sufficient to confer jurisdiction in Nevada over the Sportingbet entity that owns and operates ParadisePoker.com.[2] But even assuming *arguendo* the contrary, this is irrelevant to Defendant Sportingbet Plc. Any Internet-

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[1] A Motion to Dismiss for Lack of Jurisdiction under Fed. R. Civ. P. 12(b)(2) can properly be supported by affidavit. See, St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989); Taylor v. Portland Paramount Corp., 383 F.2d 634, 639 (9th Cir. 1967); see also, Fed. R. Civ. P. 43(e).

[2] In the absence of evidence that ParadisePoker.com targets Nevada for sales or aims its website intentionally at Nevada, there is insufficient grounds to find that the Sportingbet entity owning and operating ParadisePoker.com could reasonably anticipate being haled into court in Nevada. See Millennium Enterprises, Inc. v. Millennium Music LP, 33 F.Supp. 2d 907 (D.Or. 1999). In the absence of a showing purposeful availment in Nevada, as distinct from any other state, the mere placement of a website on the Internet with knowledge that the site might be accessed in Nevada is an insufficient basis for assertion of personal jurisdiction. See Ronnach, Inc. v. Ronnach Corp., 52 F.Supp. 2d 681 (E.D. Va. 1999). Although Plaintiff has speculated that ParadisePoker.com has advertised and/or solicited business within Nevada, it has offered no proof of actual advertisement in or solicitation targeted at Nevada. In the absence of purposeful availment within the State of Nevada, Plaintiff has failed to demonstrate personal jurisdiction over the Sportingbet entity operating ParadisePoker.com.

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ATTORNEYS AT LAW
NINTH FLOOR
3960 HOWARD HUGHES PKWY
LAS VEGAS, NEVADA 89109
(702) 796-5555

based activities of unnamed Sportingbet subsidiaries cannot establish the required "minimum contacts" over Sportingbet Plc. The mere existence of a parent-subsidiary relationship does not confer personal jurisdiction over the parent based on a subsidiary's contacts. Indeed, a parent may even be directly involved in the activities of a subsidiary without inheriting its "contacts" as long as that involvement is "consistent with the parent's investor status." In re Phenylpropanolamine (PPA) Prods. Liability Litig., 344 F.Supp.2d 686, 691 (W.D. Wash. 2003)(citing Doe v. Unocal Corp., 248 F.3d 915, 925 (9th Cir. 2001).[3]

Plaintiff has raised no facts to support the allegation that Sportingbet Plc maintains minimum contacts with Nevada. Instead, Plaintiff offers irrelevant information and conjecture. For example, Plaintiff cites to a promotional trip to Las Vegas offered by ParadisePoker.com, as if this is some way relevant to the jurisdictional inquiry. Plaintiff also has suggested that Sportingbet "may direct" advertising to Nevada, but offers no factual support for this speculation with regard to any Sportingbet subsidiary, let alone Sportingbet Plc. Because Plaintiff has failed to assert facts to establish that jurisdiction exists over Sportingbet Plc, the case should be dismissed.

It is inexplicable that after filing the Complaint, Plaintiff now asks the Court for discovery to determine whether jurisdiction exists. This request suggests that Plaintiff filed its Complaint alleging jurisdiction when Plaintiff, in fact, had no evidence to support a jurisdictional allegation. Such activity constitutes a clear violation of the requirements of Fed. R. Civ. P. 11, and at minimum, can be sanctioned by dismissal of the Complaint.

B. IN THE EVENT THAT PLAINTIFF DEMONSTRATES JURISDICTION OVER SPORTINGBET PLC IS APPROPRIATE, PLAINTIFF SHOULD BE REQUIRED TO FILE A MORE DEFINITE STATEMENT.

With respect to Sportingbet Plc's request that Plaintiff be required to file a more definite statement pursuant to Fed. R. Civ. P. 12(e), Plaintiff's opposition to the present Motion appears

[3] It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation, so-called because of control through ownership of another corporation's stock, is not liable for the acts of its subsidiaries. United States v. Bestfoods, 524 U.S. 51, 61 (1998). Appropriate parental involvement includes monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures. Id. at 72.

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ATTORNEYS AT LAW
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to concede that Plaintiff is accusing a single product, ParadisePoker.com, of infringement. This position is consistent with prior communications from Plaintiff's counsel; wherein Plaintiff has made specific references to ParadisePoker.com, but has cited no other allegedly infringing activity. Plaintiff, however, refuses to amend its Complaint – a pleading that defines the issues in the case - to identify its allegations of infringement.

Plaintiff's comparison of its Complaint with Form 16, found in the Appendix to the Federal Rules of Civil Procedure, is deficient in that it fails to point out significant dissimilarities between Plaintiff's Complaint and the guidelines of Form 16. Specifically, in Form 16, a particular product - an electric motor - is identified as the patent-protected product of Plaintiff, and an allegedly infringing product of the Defendant - an electric motor - is specifically identified as well. Plaintiff's Complaint, on the other hand, fails to state with specificity what products are protected by its own patent, and further fails to state with specificity what product of Sportingbet Plc allegedly infringes upon its patent. As such, Plaintiff's Complaint does not comport with Form 16, or the legal requirements for specificity in pleading patent infringement.

Plaintiff has not argued that it will suffer any prejudice from complying with the request for fair patent notice pleading. Based on the foregoing, Sportingbet Plc respectfully requests an Order from the Court requiring Plaintiff to amend its Complaint (if not dismissed) to contain a more definite statement of its claims.

III.

CONCLUSION

Plaintiff has not demonstrated that Sportingbet Plc has the required minimum contacts within the State of Nevada sufficient to support a finding of jurisdiction. Therefore, Plaintiff's claims against Sportingbet Plc should be dismissed, pursuant to Fed. R. Civ. P. 12(b)(2), for lack of jurisdiction.

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NINTH FLOOR
3960 HOWARD HUGHES PKWY
LAS VEGAS, NEVADA 89109
(702) 796-5555

Assuming *arguendo* that jurisdiction exists, Plaintiff's claims against Sportingbet Plc fail to meet proper standards of clarity and definition, and Plaintiff should be required to file a more definite statement pursuant to Fed. R. Civ. P. 12(e).

Dated this 8th day of November 2005.

GORDON & SILVER, LTD.

JOSEPH S. KISTLER
Nevada Bar No. 3458
JOEL Z. SCHWARZ
Nevada Bar No. 9181
Nevada Bar No.
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89109
(702) 796-5555
Attorneys for Defendant,
Sportingbet Plc

CERTIFICATE OF MAILING

The undersigned, an employee of Gordon & Silver, Ltd., hereby certifies that on the 8th day of November 2005, she served a copy of the above document by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Mark A. Hutchison, Esq.
Hutchison & Steffen, LLC
Peccole Professional Park
10080 Alta Drive, Suite 200
Las Vegas, NV 89145
Fax: (702) 385-2086
Attorney for Plaintiff
1ST TECHNOLOGY, LLC

William W. Flachsbart, Esq.
Niro Scavone Haller & Niro
181 West Madison, Suite 4600
Chicago, Illinois 60602-4515
Fax: (312) 236-3137
Attorney for Plaintiff
1ST TECHNOLOGY, LLC

An employee of GORDON & SILVER, LTD.